



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

JUL 06 2006

CERTIFIED MAIL
VIA FIRST CLASS MAIL

Lori Kimmel
russdiamond.org
109 West Main Street
Annville, PA 17003

RE: MUR 5636
russdiamond.org
Lori Kimmel, as treasurer

Dear Ms. Kimmel:

On June 20, 2006, the Federal Election Commission found reason to believe that russdiamond.org and you, as treasurer, violated 11 C.F.R. § 110.3(d), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed for your information.

The Commission nevertheless admonishes russdiamond.org and you for making in-kind contributions from Mr. Diamond's non-federal committee to his federal campaign, in violation of the Act and Commission regulations. Evidence obtained from public sources indicates that russdiamond.org paid for the portion of Mr. Diamond's website that benefited his federal campaign and appears to have paid for other expenses benefiting his federal campaign. These transfers violate 11 C.F.R. § 110.3(d).

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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Russ Diamond
MUR 5636
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If you have any questions, please contact Zachary Mahshie, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Toner".

Michael E. Toner
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

Respondents:

rusddiamond.org
Lori Kimmel, as treasurer

MUR: 5636

I. INTRODUCTION

This matter stems from allegations in a complaint filed by the Republican State Committee of Pennsylvania that rusddiamond.org and Lori Kimmel, in her official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended, ("the Act") by making disbursements in connection with Russ Diamond's campaign for U.S. Congress for the 17th Congressional District in Pennsylvania in 2004.

II. FACTUAL AND LEGAL ANALYSIS

On February 12, 2004, Russ Diamond announced his candidacy for State Representative in the 2004 General Election on the Libertarian ticket. He registered a state political committee, rusddiamond.org, with the Pennsylvania Bureau of Commissions, Elections and Legislation ("Pennsylvania Bureau") and filed reports with the Pennsylvania Bureau disclosing disbursements made and receipts received purportedly in connection with his state campaign. Two months later, on April 5, 2004, Mr. Diamond declared he would simultaneously run on the Libertarian ticket for Congress in the 2004 race for the 17th District. In the April 5 press release, Mr. Diamond stated he "[did] not intend to spend a dime on the 17th race" beyond the required \$150 filing fee. Attachment 1. He appeared on the ballot in both general elections but finished far behind the major party candidates in each election.

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There are a number of disbursements reported by russdiamond.org to the Pennsylvania Bureau that appear to be, at least in part, in-kind contributions to Mr. Diamond's Federal campaign. These disbursements total \$7,766 and comprise \$7,215 for website-related expenses and \$551.11 for certain overhead expenses. *See* Attachment 1 (Diamond Press Release April 5, 2004); Attachment 3 (disclosed state disbursements for "overhead expenses" by russdiamond.org). Mr. Diamond's campaign website, www.russdiamond.org, contained general information about his policy positions, but it also contained specific references to his state and Federal campaigns.¹ Although Mr. Diamond claims he reimbursed his state committee \$92.66 "for the appropriate pro-rated portion of the russdiamond.org website used for [his] Federal campaign," he does not describe the basis for this calculation and the amount seems inadequate given that both campaigns appear to have been featured in equal proportions. Thus, russdiamond.org may have made an in-kind contribution to the Federal campaign in an amount that could be as much as \$3,607, or half of \$7,215. Furthermore, there are, in aggregate, \$550 in disbursements by the state campaign for office supplies and other overhead reported to the Pennsylvania Bureau. *See* Attachment 3. Because Mr. Diamond admits to using his business office and equipment for his Federal campaign it appears likely that his Federal campaign also consumed some portion of the office supplies and other overhead disbursements.

Available information indicates that other activities and disbursements reported to the Pennsylvania Bureau may also be, at least in part, in-kind contributions from russdiamond.org to the Federal campaign. For example, Mr. Diamond produced an audio CD, which he distributed

¹ The information on Mr. Diamond's website pertaining to his Federal and state campaigns has been removed. The website now contains information about Mr. Diamond's gubernatorial campaign. *See* <http://www.russdiamond.org/> (last visited May 30, 2006).

online and at his campaign headquarters, that detailed his positions on a number of campaign issues and includes information on both his state and Federal races. Supplemental Complaint, Attachment 2. While there are no expenditures disclosed by Mr. Diamond to the Pennsylvania Bureau that are explicitly tied to the audio CD, an article posted on Mr. Diamond's website suggests that Mr. Diamond produced the CD at a studio he owns, called Raintree, and Mr. Diamond's state committee reported total expenditures to and in-kind contributions from Raintree in excess of \$4,000. *Id.* Other examples of disbursements that may be attributable to both campaigns include \$5,800 for advertising, \$3,800 for campaign signs, banners, photos, and buttons, and \$2,500 for postage. *See* Attachment 2. Although there is insufficient information available at this time to know how much the CD cost and what portion of the advertising, signs, and postage disbursements, if any, should be attributed to the Federal campaign, at least some portion of the approximately \$16,000 in disbursements for these activities may be in-kind contributions from russdiamond.org to Mr. Diamond's Federal campaign.

Because it appears that Mr. Diamond was a candidate under the Act, the in-kind contributions from russdiamond.org to the Federal campaign would appear to be prohibited transfers in violation of 11 C.F.R. § 110.3(d), which prohibits a candidate's nonfederal campaign committee from transferring funds or assets to his or her principal or authorized federal committee. Accordingly, the Commission finds reason to believe that that russdiamond.org and Lori Kimmel, in her official capacity as treasurer, violated 11 C.F.R. § 110.3(d) by making prohibited transfers in the form of in-kind contributions to Mr. Diamond's federal campaign.

Attachments

Attachment 1, Diamond Press Release (April 5, 2004)

Attachment 2, All disclosed state disbursements by russdiamond.org

Attachment 3, Disclosed state disbursements for "overhead expenses" by russdiamond.org

ATTACHMENT 1

26044143966

April 5 Press Release

For Immediate Release
For More Information:

Russ Diamond
info@russsdiamond.org
www.russsdiamond.org

Diamond Denounces Paterno Campaign, Enters 17th

Disgusted by the actions of Republican power brokers supporting Scott Paterno, businessman Russ Diamond (L-Annville) today announced his candidacy for Congress in Pennsylvania's 17th District.

Diamond, who is also running for General Assembly in PA's 101st Legislative District, received the Libertarian nomination for the 17th Congressional race at the Party's state convention in Harrisburg on March 20. His decision to accept the nomination was based on his disdain for the candidate selection and endorsement tactics used by some Republicans, most notably state Senator David J. "Chip" Brightbill, and recent points of contention regarding Paterno's experience and voting record.

"For weeks I've been questioning Senator Brightbill's actions in employing Paterno to prop up what I consider to be a hollow designer name candidacy," Diamond said today in a journal entry on his campaign website. "On March 22 at the Lebanon County Republican Committee's Lincoln Day dinner, Brightbill as much as admitted that Paterno's employment was a ruse.

"I have no problem with the Senator supporting whichever candidate he chooses, but I believe he may have crossed the boundaries of personal privilege when he chose to use my tax dollars to give this young man a job. With recent reports regarding Governor Rendell's lead-foot drivers and ghost-voting legislators, I suppose I shouldn't be surprised by Brightbill's actions. Our elected officials continually place their own personal interests over those of their constituents. This type of conduct flies in the face of the dignity and honor of public service."

Although Diamond intends to focus his attention squarely on the 101st District race throughout 2004, he indicated a desire to offer similarly disgruntled voters an alternate choice for Congress.

"Republican voters in Lebanon and Schuylkill Counties are livid about the way Paterno received official county endorsements. In the unlikely event that he actually wins the primary, my candidacy in the 17th will serve as a constant reminder of how he got there.

"With the exception of the required \$150 filing fee, I do not intend to spend a dime on the 17th race. I will, however, keep a constant vigil by watching all other candidates, regularly offering Libertarian viewpoints on the issues and participating in debates. I will bring an 'everyman' perspective to the table, a viewpoint conspicuously absent from most federal campaigns."

The Libertarian Party, the third largest and fastest growing political party in Pennsylvania and the nation, provides a beacon of hope for voters disillusioned by the fog of Big Government.

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Have an opinion? Voice it now!

ATTACHMENT 2

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State Disclosure Reports

All Expenditures

Report Date (Cycle)	Expenditure	Purpose
04/12/2004 (Cycle 2)	\$297.00	.org,.net,.com website registrations
11/22/2004 (Cycle 6)	\$2,368.95	advertising
11/22/2004 (Cycle 6)	\$1,074.00	Advertising
05/17/2004 (Cycle 3)	\$902.40	advertising
12/31/2004 (Cycle 7)	\$308.40	advertising
05/17/2004 (Cycle 3)	\$290.00	advertising
12/31/2004 (Cycle 7)	\$200.00	advertising
10/18/2004 (Cycle 5)	\$150.00	advertising
11/22/2004 (Cycle 6)	\$143.70	Advertising
05/17/2004 (Cycle 3)	\$100.00	advertising
05/17/2004 (Cycle 3)	\$100.00	advertising
10/18/2004 (Cycle 5)	\$81.80	advertising
10/18/2004 (Cycle 5)	\$54.00	advertising
05/17/2004 (Cycle 3)	\$50.00	advertising
04/12/2004 (Cycle 2)	\$535.00	advertising magnets
12/31/2004 (Cycle 7)	\$6.00	bank charge
12/31/2004 (Cycle 7)	\$0.20	bank charge
10/18/2004 (Cycle 5)	\$0.10	bank service charge
11/22/2004 (Cycle 6)	\$1,535.17	bulk mailing
11/22/2004 (Cycle 6)	\$1,123.42	Bulk Mailing
11/22/2004 (Cycle 6)	\$674.74	Bulk Mailing Preparation
04/12/2004 (Cycle 2)	\$291.00	campaign buttons
10/18/2004 (Cycle 5)	\$100.00	campaign contribution
04/12/2004 (Cycle 2)	\$262.50	campaign photos
10/18/2004 (Cycle 5)	\$75.00	campaign photos
04/12/2004 (Cycle 2)	\$532.12	campaign signs
10/18/2004 (Cycle 5)	\$15.00	car show entry fee
10/18/2004 (Cycle 5)	\$8.00	car show entry fee
10/18/2004 (Cycle 5)	\$8.00	car show entry fee
10/18/2004 (Cycle 5)	\$493.27	car transfer/inspection & insurance
04/12/2004 (Cycle 2)	\$37.73	checks
04/12/2004 (Cycle 2)	\$99.00	convention registration
10/18/2004 (Cycle 5)	\$525.45	copies
10/18/2004 (Cycle 5)	\$50.00	craft show entry fee
04/12/2004 (Cycle 2)	\$250.00	deposit on litter bags
04/12/2004 (Cycle 2)	\$313.35	design & printing of announcement postcards
10/18/2004 (Cycle 5)	\$100.00	donation
10/18/2004 (Cycle 5)	\$100.00	filing fee for state house campaign
10/18/2004 (Cycle 5)	\$359.60	fundraiser refreshments
11/22/2004 (Cycle 6)	\$200.00	FUNDRAISING LETTER
11/22/2004 (Cycle 6)	\$116.11	Halloween Candy- Promo Events
04/12/2004 (Cycle 2)	\$117.60	libertarian party banners
04/12/2004 (Cycle 2)	\$150.00	License for Announcement Rally
11/22/2004 (Cycle 6)	\$377.54	Litter Bags Promo Materials
04/12/2004 (Cycle 2)	\$85.33	mailers/laser copies of postcards & yard signs
10/18/2004 (Cycle 5)	\$6.00	notary
10/18/2004 (Cycle 5)	\$48.00	notary fee
10/18/2004 (Cycle 5)	\$156.00	notary fees
12/31/2004 (Cycle 7)	\$8.00	notary fees
05/17/2004 (Cycle 3)	\$6.00	notary fees
11/22/2004 (Cycle 6)	\$6.00	notary services
04/12/2004 (Cycle 2)	\$6.00	notary services

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State Disclosure Reports All Expenditures

Report Date (Cycle)	Expenditure	Purpose
05/17/2004 (Cycle 3)	\$147.61	office supplies
10/18/2004 (Cycle 5)	\$105.79	office supplies
04/12/2004 (Cycle 2)	\$57.24	office supplies
11/22/2004 (Cycle 6)	\$31.74	office supplies
11/22/2004 (Cycle 6)	\$10.15	office supplies
04/12/2004 (Cycle 2)	\$154.55	office supplies/postage
10/18/2004 (Cycle 5)	\$295.00	partial loan repayment
10/18/2004 (Cycle 5)	\$150.00	partial repayment of loan
04/12/2004 (Cycle 2)	\$50.00	Past election results list
10/18/2004 (Cycle 5)	\$490.00	post election party
04/12/2004 (Cycle 2)	\$333.50	postage
10/18/2004 (Cycle 5)	\$304.00	postage
10/18/2004 (Cycle 5)	\$267.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$230.00	postage
10/18/2004 (Cycle 5)	\$111.00	postage
10/18/2004 (Cycle 5)	\$75.20	postage
10/18/2004 (Cycle 5)	\$37.00	postage
04/12/2004 (Cycle 2)	\$16.10	postage
11/22/2004 (Cycle 6)	\$1,853.40	Raintree (printing)
10/18/2004 (Cycle 5)	\$1,050.00	Raintree Studio (postcards)
10/18/2004 (Cycle 5)	\$1,178.00	Raintree Studio (promotional brochures)
10/18/2004 (Cycle 5)	\$448.95	Russ Diamond (promotional material)
04/12/2004 (Cycle 2)	\$93.00	secure web certificate
10/18/2004 (Cycle 5)	\$625.40	signs
10/18/2004 (Cycle 5)	\$100.00	signs
11/22/2004 (Cycle 6)	\$54.66	Signs
11/22/2004 (Cycle 6)	\$82.19	trick or treat nite items- Promo Event
04/12/2004 (Cycle 2)	\$1,781.25	web site design
04/12/2004 (Cycle 2)	\$5,043.75	website design
10/18/2004 (Cycle 5)	\$1,321.63	yard signs

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ATTACHMENT 3

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**State Disclosure Reports
Overhead Expenditures**

Campaign/Committee	Report Date (Cycle)	Expenditure	Purpose
Russ Diamond	04/12/2004 (Cycle 2)	\$154.55	office supplies/postage
DIAMOND, RUSS - RUSSDIAMOND.ORG	05/17/2004 (Cycle 3)	\$147.61	office supplies
DIAMOND, RUSS - RUSSDIAMOND.ORG	10/18/2004 (Cycle 5)	\$105.79	office supplies
Russ Diamond	04/12/2004 (Cycle 2)	\$57.24	office supplies
DIAMOND, RUSS - RUSSDIAMOND.ORG	04/12/2004 (Cycle 2)	\$37.73	checks
DIAMOND, RUSS - RUSSDIAMOND.ORG	11/22/2004 (Cycle 6)	\$31.74	office supplies
DIAMOND, RUSS - RUSSDIAMOND.ORG	11/22/2004 (Cycle 6)	\$10.15	office supplies
RUSSDIAMOND.ORG	12/31/2004 (Cycle 7)	\$6.00	bank charge
RUSSDIAMOND.ORG	12/31/2004 (Cycle 7)	\$0.20	bank charge
DIAMOND, RUSS - RUSSDIAMOND.ORG	10/18/2004 (Cycle 5)	\$0.10	bank service charge
TOTALS:		\$ 551.11	

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